

John J. Duffy (SB No. 6224834)
Kevin M. Ringel (SB No. 6308106)
Margaret C. Redshaw (SB No. 6327480)
SWANSON, MARTIN & BELL, LLP
330 N Wabash, Suite 3300
Chicago, Illinois 60611
Tel: (312) 321-9100; Fax: (312) 321-0990
jduffy@smbtrials.com
kringel@smbtrials.com
mredshaw@smbtrials.com

Marc G. Cowden (SB No. 169391)
Adam Stoddard (SB No. 272691)
**SHEUERMAN, MARTINI, TABARI,
ZENERE & GARVIN**
1033 Willow Street
San Jose, California 95125
Tel: (408) 288-9700; Fax: (408) 295-9900
mcowden@smtlaw.com
astoddard@smtlaw.com

Counsel for Defendant Chart Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

This Document Relates to:
Case No. 3:18-cv-01586
(A.B., C.D., E.F., G.H., and I.J.)

Case No. 3:18-cv-01586-JSC

**DEFENDANT'S AMENDED
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL NO. 2**

N.D. Cal. Local Rules 7-11 and 79-5

Judge: Hon. Jacqueline Scott Corley

No Hearing Set Pursuant to L.R. 7-11(c)

TO THE COURT, THE PARTIES, AND ALL COUNSEL FOR RECORD:

PLEASE TAKE NOTICE that Chart Inc. will and does hereby move the Court, pursuant to Civil Local Rule 79-5, for an administrative order to file the following documents or portions thereof under seal:

- Certain exhibits to the Declaration of Kevin M. Ringel in Support of Chart's Motion to Exclude Plaintiffs' Experts Anand Kasbekar and David Wininger, including:
 - Exhibit A – Expert Report of Anand Kasbekar dated November 6, 2020;
 - Exhibit B – Expert Rebuttal Report of Anand Kasbekar dated December 4, 2020;
 - Exhibit C - Deposition Transcript of Anand Kasbekar dated December 13, 2019;
 - Exhibit D - Deposition Transcript of Anand Kasbekar dated November 25, 2020;
 - Exhibit E - Deposition Transcript of Anand Kasbekar dated December 15, 2020;
 - Exhibit F – Amended Expert Report of David Wininger dated December 4, 2020;
 - Exhibit G – Deposition Transcript of David Wininger dated November 30, 2020;
 - Exhibit H – Expert Report of Franklin Miller dated November 20, 2020;
 - Exhibit I – Expert Rebuttal Report of Franklin Miller dated December 11, 2020;
 - Exhibit J - Deposition Transcript of Franklin Miller dated December 14, 2020;
 - and

- Exhibit K – Expert Rebuttal Report of Ron Parrington dated December 8, 2020.

Defendant files this motion to comply with the Second Amended Stipulated Protective Order (EFC No. 596) and Civil Local Rule 79-5. Pursuant to Civil Local Rules 79-5 and 7-11(c), no hearing date has been set.

Material to be Filed Under Seal

Paragraph 12.3 of the Second Amended Stipulated Protective Order prohibits a party from filing in the public record any disclosure or discovery material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (“Protected Material”) without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons. Protected Material includes portions of pleadings that contain, summarize, or reflect the Protected Material. ECF No. 598 at ¶ 12.3.

Materials Designated by Plaintiffs. Plaintiffs designate portions of the material in Exhibit F as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Pursuant to Local Rules 79-5(d)(1) and (2), the Designating Parties are responsible for establishing that all of the designated materials are sealable. Chart takes no position on whether these materials should remain under seal.

Materials Designated by Chart. Additionally, Chart has designated its expert reports as Confidential or Highly Confidential under the Stipulated Protective Order. These reports contain confidential information relating to Chart’s business operations, processes, and functions. Courts have routinely recognized the need to protect from disclosure confidential business information like the information sought to be sealed here. *See, e.g., Huawei Techs., Co., Ltd. v. Samsung Elecs. Co., Ltd.*, 2017 WL 1508756, at *1 n.1 (N.D. Cal. Apr. 27, 2017) (granting party’s administrative motion to file under seal confidential business information, including internal meeting minutes and

1 excerpts from the party's opposition motion); *Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*,
2 2014 WL 12700984, at *1 n.1 (N.D. Cal. Oct. 3, 2014) (granting defendant corporation's
3 administrative motion to file under seal document containing sensitive business information).

4 Moreover, disclosure of such commercially sensitive business information would allow
5 potential competitors to gain insight into how Chart conducts its operations and business
6 relationships such that its business could be significantly and irreparable harmed. In such
7 circumstances, courts have granted a party's request to file such information under seal. *See, e.g.*,
8 *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (ordering sealing where documents
9 could be used "as sources of business information that might harm a litigant's competitive
10 standing") (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *Contreras v.*
11 *Portfolio Recovery Assocs., LLC*, 2017 WL 2964012, at *6 (N.D. Cal. Jul. 12, 2017) (holding that
12 the release of documents that might harm defendant's competitive business strategy constituted a
13 compelling reason to file such documents under seal). Chart's request to seal the above-identified
14 documents is narrowly tailored to only those portions that merit sealing.

15 Chart moves to file the designated materials under seal pursuant to paragraph 12.2 of the
16 Second Amended Stipulated Protective Order and Local Rules 7-11 and 79-5.

17 Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion:

- 18 1. The Declaration of Kevin M. Ringel in Support of Chart's Administrative Motion No.
19 2 to Seal Motion to Exclude Anand Kasbekar and David Wininger;
- 20 2. A proposed order that lists each document and portion thereof sought to be sealed; and
- 21 3. Redacted and unredacted versions of Exhibits A-K to the Declaration of Kevin M.
22 Ringel in Support of Chart's Motion to Exclude Anand Kasbekar and David Wininger.

1 Dated: January 8, 2021.

Respectfully submitted,

2 By: /s/ Kevin M. Ringel

3 John J. Duffy (SB No. 6224834)
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mcowden@smtlaw.com
astoddard@smtlaw.com

17 *Counsel for Defendant Chart, Inc.*
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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021 I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

Dated: January 8, 2021.

Respectfully submitted,

By: /s/ Margaret C. Redshaw

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